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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Cartwright International Van Lines, Inc.

File: B-252430

Date: June 10, 1993

DIGEST

1. A delivering carrier alleging that damage was due to faulty packaging by another party has the burden of proving that the faulty packaging was the sole cause of the damage.

2. A prima facie case of carrier liability is not established where it cannot be shown that an item suggested as the replacement for one that was broken in-transit was equivalent to the broken one.

DECISION

Cartwright International Van Lines, Inc., requests review of our Claims Group's settlement amending the Air Force's set-off of $996.13 from money otherwise owed Cartwright to recover transit damages to a service member's household goods.[1] We modify the settlement.

Cartwright obtained the household goods from a nontemporary storage (NTS) contractor in Arizona on September 14, 1988, and it delivered them to the member's new duty station in Texas 2 weeks later. A Notice of Loss or Damage (DD Form 1840R) was dispatched to Cartwright on October 17, 1988. The record indicates that both Cartwright and the government inspected the damaged shipment; that the member's claim against the Air Force was approved on January 4, 1989; and that, on January 5, 1989, the Air Force dispatched to Cartwright a Demand on Carrier/Contractor (DD Form 1843) for $996.13 for damages. Receiving no reply from Cartwright, on August 14, 1989, the Air Force set off $996.13 from money otherwise owed to the firm.

The carrier states that set-off was improper because the Air Force did not comply with section 10 of the Debt Collection Act of 1982, 31 U.S.C. § 3716; specifically, Cartwright says that it never received a proper demand, supported with

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[1]This shipment moved under Personal Property Government Bill of Lading (PPGBL) RP-207,792.

damage estimates, before the set-off.[2] Cartwright also disputes liability for any damage to certain packed items based on the shipper's comments on the DD Form 1840R suggesting that damage was caused by poor packing. In addition, Cartwright complains that it prepared a rider taking exception to the condition of certain items when it received the shipment, but the NTS contractor refused to sign it. Finally, Cartwright argues that the shipper did not adequately support the value of damages to a porcelain figurine packed in item 64.

The Claims Group found that the notice of Cartwright's debt was adequate to support the set-off; the record supported the carrier's liability irrespective of the shipper's notations on the DD Form 1840R; the rider was ineffectual because the NTS contractor did not sign it; and the amount set-off for the figurine was proper.

Except for the figurine, we affirm the Claims Group's settlement.

The DD Form 1843 demand shows that it was dispatched on January 5, 1989, and that it addressed Cartwright's concerns as to content. Although the carrier denies receiving it, we note that it was addressed to the same place as was the DD Form 1840R (which Cartwright did receive). The record also indicates that the Air Force mailed two more copies of the DD Form 1843 (in April and June 1990) to the same address before Cartwright acknowledged receiving a demand. In these circumstances, we see no reason to object to the set-off under 31 U.S.C. § 3716.

We also agree with Claims that the rider offered by Cartwright cannot be considered at face value. The carrier's Tender of Service agreement[3] provides that when opinions differ between the carrier's driver and the NTS representative over the condition of items, "both opinions will be listed on [the] exception sheet and separately identified as to source. Both parties will sign the exception sheet. . . . " A rider signed only by the delivering carrier's representative obviously is no more than a self-serving document that cannot, on its own, transfer liability from the carrier, as the last bailee, to the NTS contractor. See A-1 Ace Moving and Storage, Inc., B-243477, June 6, 1991.

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[2]The statute authorizes collection of a debt by offset after detailed written notice to the debtor.

[3]The standard Tender of Service signed by participating carriers is contained at Appendix A, DOD 4500.34R, DOD Personal Property Traffic Management Regulation.

Cartwright relies on the member's comments on the DD Form 1840R as evidence of improper packing. For example, the shipper noted that there had been "no packing paper" for a crushed dried flower arrangement (in item 69), and that two scratched and chipped 45 RPM records (item 87) were "not packed." However, the carrier's own inspector did not belie"e that damage to either of those items was transit-related, and also recommended settlement on other items notwithstanding the member's comments on the DD Form 1840R. Inspection reports often provide substantial evidence in resolving disputes over the propriety of an NTS contractor's packing. See Cartwright Van Lines, B-192785, Oct. 11, 1979. Perhaps faulty packing caused some of the damage to the packed items, but, in our view, the evidence provided by Cartwright is insufficient to overcome the presumption that, as the last bailee, it caused the damage. See McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415 (1978).

Finally, the record contains an estimate of $125, plus 7.5 percent sales tax, from a San Antonio area jeweler apparently to replace the figurine. However, the record does not show whether the jeweler provided the estimate based on actual observation of the broken figurine, or merely from information provided by the member. The carrier's inspector examined the broken figurine and found no manufacturer's or artist's identification; he concluded that the article was inexpensive. Also, the government official who inspected the member's household goods did not examine the figurine. The record does not contain a copy of the sales receipt at purchase for the broken figurine, or statements reflecting such matters as its origin, production, content or value. Generally, a member must offer some substantive evidence to prove the value of a lost or damaged item. See Suddath Van Lines, B-247430, July 1, 1992. On this record, we find insufficient evidence to support the value of the damages claimed against Cartwright for purposes of a prima facie case of liability for the figurine.

The Claims Group's settlement is affirmed except for $120.94 for the figurine.

James F. Hinchman
General Counsel